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 Chamberlain L. Brice

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X
 KIM VASQUEZ,

Plaintiff,

v.

BRANDON MEYERS, NEIL O'DONNELL,
 and THE TOWN OF ORANGETOWN,
 Defendants.
 -----X

ORDER

15 CV 8853 (VB)

By motion dated February 17, 2021, plaintiff, proceeding pro se, seeks an extension of time pursuant to Fed. R. App. P. 4(a)(5) to file a notice of appeal from the Court's Order entered on March 5, 2018, dismissing this case. (Doc. #70). The motion is denied as plainly without merit.

In its March 5, 2018, Order, the Court dismissed the case for failure to prosecute and failure to comply with Court orders. (Doc. #57). In response to that Order, plaintiff submitted a letter (i) stating he first learned the case had been dismissed on April 26, 2018, and (ii) seeking to reopen the case. (Doc. #62). By Order dated May 1, 2018, the Court denied the request to reopen. (Doc. #64). That Order was mailed to plaintiff at the multiple addresses he had provided to the Court. The time to file a notice of appeal from the Court's March 5, 2018, Order expired no later than April 9, 2018, and the time to file a notice of appeal from the Court's May 1, 2018, Order expired no later than June 4, 2018. See Fed. R. App. P. 4(a)(1), 26(c).

Plaintiff now claims he did not file a timely notice of appeal because: "I just received appeal papers, also learned of the judgment late, based upon poor health encounters which I have corrected by the grace of God. I was dealing with medical complications."

Plaintiff's motion was made nearly three years after the time to file a notice of appeal expired. Thus, the motion is untimely under Fed. R. App. P. 4(a)(5). Moreover, the Court declines to reopen the time to file an appeal because (i) plaintiff clearly received notice by no later than April 26, 2018, of the March 5, 2018, Order dismissing the case, (ii) the instant motion was filed more than 180 days after the March 5 and May 1, 2018, Orders were entered and more than fourteen days after plaintiff received notice of those Orders, and (iii) defendants would clearly be prejudiced by having to respond to an appeal nearly three years after the case was dismissed. See Fed. R. App. P. 4(a)(6).

Accordingly, the motion for an extension of time to file a notice of appeal is DENIED.

The Clerk is instructed to terminate the motion. (Doc. #70).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purposes of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Chambers will mail a copy of this Order to plaintiff at his current address, as reflected in the instant motion:

Kim Vasquez
51 New Hempstead Road
New City, NY 10956

Dated: February 22, 2021
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge